

LAW OFFICES

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COHN AND MARKS

JOEL H. LEVY  
ROBERT B. JACOBI  
ROY R. RUSSO  
RONALD A. SIEGEL  
LAWRENCE N. COHN  
RICHARD A. HELMICK  
WAYNE COY, JR.  
J. BRIAN DE BOICE  
JEROLD L. JACOBS

SUSAN V. SACHS  
KEVIN M. GOLDBERG  
JOSEPH M. DI SCIPIO

SUITE 300  
1920 N STREET N.W.  
WASHINGTON, D.C. 20036-1622

TELEPHONE (202) 293-3860  
FACSIMILE (202) 293-4827  
HOMEPAGE WWW.COHNMARKS.COM

OF COUNSEL  
MARCUS COHN  
LEONARD H. MARKS  
RICHARD M. SCHMIDT, JR.

DIRECT DIAL: 202/452-4823  
INTERNET ADDRESS: [jlj@cohnmarks.com](mailto:jlj@cohnmarks.com)

July 18, 2001

RECEIVED

JUL 18 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

Magalie R. Salas, Secretary  
Federal Communications Commission  
Portals II, Filing Center, TW-A325  
Washington, D.C. 20554

**Re: MM Docket No. 90-195  
FM Table of Allotments  
(Brookline MO)**

Dear Ms. Salas

Enclosed herewith for filing, on behalf of our client, Lake Broadcasting, Inc., are an original and four (4) copies of its Motion to Strike Opposition to Petition for Reconsideration or, Alternatively, Reply to Opposition in the above-referenced matter.

Please direct all communications concerning this matter to the undersigned.

Very truly yours

  
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (w/enc.)

No. of Copies rec'd 014  
List A B C D E

BEFORE THE

# Federal Communications Commission

In the Matter of )  
)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations )  
(Brookline, Missouri) )

MM Docket No. 90-195  
RM-7152

**RECEIVED**  
**JUL 18 2001**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**MOTION TO STRIKE OPPOSITION TO**  
**PETITION FOR RECONSIDERATION**  
**OR, ALTERNATIVELY,**  
**REPLY TO OPPOSITION**

Lake Broadcasting, Inc. ("Lake"), licensee of Station KBMX(FM), Eldon, Missouri, by its attorneys, pursuant to Section 1.429 of the Commission's Rules, hereby moves to strike the late-filed July 9, 2001 "Opposition" of MW Springmo, Inc. ("MWS"), permittee of a new FM station on Channel 271A at Brookline, Missouri, in this proceeding. Out of abundance of caution, Lake also responds to the Opposition on the merits. For the reasons that follow, MWS's Opposition should be dismissed or denied.

1. On July 9, 2001, MWS filed a Motion for Leave to Accept its late-filed Opposition. The only grounds stated (at 1) for the six-day admitted delay is that "Through an inadvertent error, the correct publication and filing date was missed". Since MWS opposes Lake's Petition for Reconsideration on procedural grounds (the alleged mootness of Lake's Petition), it is appropriate for Lake to challenge MWS's belated participation in this proceeding on procedural grounds, too. MWS's pleading does nothing by way of "providing the Commission with a complete record upon which to make its own decision" (*id.*). MWS's mootness claims do not add to the factual record;

they merely serve to obfuscate and oversimplify a novel and complex procedural and substantive situation. Therefore, MWS's Motion should be denied and its late-filed pleading should be dismissed.

2. Assuming, arguendo, that MWS's late-filed Opposition is accepted for consideration, it mistakenly maintains (at 2, 3) that: (a) Lake's Petition for Reconsideration "cannot lie...[a]s Lake has not challenged the substantive decision"; (b) Lake's Petition for Reconsideration is "moot" because its authorizations have been revoked, and that revocation has become final; and (c) "Even were Lake to obtain more time to operate the station in Eldon, it would be on a temporary basis. There would be no permanent operator to seek the Eldon upgrade, or to contest the Brookline allotment". As Lake will now demonstrate, MWS is wrong on all counts.

3. Although filed on July 9, 2001, the Opposition ironically fails to take account of the Commission's related "*Public Notice*" ("Permanent and Interim Application Procedures Announced for Authority to Operate Stations Formerly Licensed to Entities Controlled by Michael Rice"), DA 01-1441, released July 3, 2001. That *Public Notice* (at 2) grants Lake special temporary authorization ("STA") to continue its operation of Station KBMX(FM) for 90 days from the date of the *Public Notice*, or until 14 days after interim operators or permanent successor licensees have given notice that they are ready to commence operations, whichever occurs sooner. Moreover, and most importantly, the *Public Notice* (*id.*) states that: (a) minor change applications must continue to protect Lake's two sister AM facilities at Terre Haute, Indiana (WBOW and WBUZ), formerly licensed to Contemporary Media, Inc.; and (b) the Commission will accept interim proposals and new station proposals for permanent authority for those AM stations which specify "current operating parameters". In other words, the Commission is providing interference protection to Stations WBOW and WBUZ as if they were currently licensed stations and is waiving its AM technical rules in order to "grandfather" the stations' existing technical facilities.

4. Lake submits that these two significant technical leniencies, and the future auction of permanent facilities, are completely at odds with MWS's notions that Lake's stations have no present or future operating status or technical "rights". These leniencies and the STA granted to all of Michael Rice's operating stations also demonstrate that the Commission has sufficient statutory and regulatory authority to waive or modify any of the policies or rules that might otherwise apply to the stations. Thus, as the *Public Notice* itself proves, it is premature for MWS to proclaim (at 3) that Lake (or a successor) has no authorizations that can be "upgrade[d]" by the Commission.

5. Put differently, the *Public Notice* is silent about what special STA's or other leniencies may be applied to Lake's FM stations by future Commission Order. For instance, the Commission might decide that Lake's "rulemaking rights" in the subject MM Docket No. 90-195 proceeding "convey" to the new-station applications for the facilities of Station KBMX(FM) that will be the subject of competitive bidding in future Auction No. 37.

6. Under these circumstances, Lake renews its claim that it was premature for the Commission's Mass Media Bureau ("Bureau") to have dismissed Lake's previous Petition for Reconsideration in this proceeding. The matters presented in that Petition for Reconsideration are not yet moot and may not ultimately become moot.

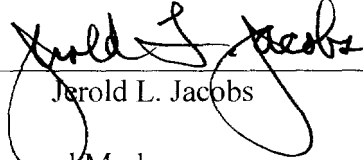
7. Accordingly, Lake respectfully requests that the Bureau should withhold any dismissal action and should hold this matter in abeyance, pending the Commission's ultimate resolution of the proceedings for interim authorization and permanent authorization of Lake's stations, announced in the *Public Notice* and subsequent Commission Orders.

WHEREFORE, in view of the foregoing, Lake respectfully asks the Mass Media Bureau to dismiss or deny MWS's Opposition, set aside the *Memorandum Opinion and Order*, DA 01-1017, released April 20, 2001, in this proceeding, reinstate Lake's Petition for Reconsideration, and hold the matter in abeyance pending the outcome of further proceedings before the Commission

pertaining to Mr. Rice's stations and construction permits, including Station KBMX(FM), as specified in the *Public Notice*.

Respectfully submitted,

LAKE BROADCASTING, INC.

By 

Jerold L. Jacobs

Cohn and Marks  
1920 N Street, N.W. Suite 300  
Washington, D.C. 20036  
(202) 293-3860

Its Attorneys

Dated: July 18, 2001

**CERTIFICATE OF SERVICE**

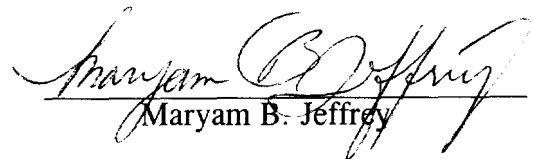
I, Maryam B. Jeffrey, hereby certify that I have mailed, first class postage prepaid, or have caused to be hand-delivered, on this 18<sup>h</sup> day of July 2001, a copy of the attached MOTION TO STRIKE OPPOSITION TO PETITION FOR RECONSIDERATION OR, ALTERNATIVELY, REPLY TO OPPOSITION to the following:

John A. Karousos, Chief (**Hand Delivery**)  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau Room 3-A266  
Federal Communications Commission  
Washington, DC 20554

Andrew J. Rhodes, Esq. (**Hand Delivery**)  
Policy and Rules Division  
Mass Media Bureau Room 2-C261  
Federal Communications Commission  
Washington, DC 20554

David D. Oxenford, Esq.  
Amy L. Van de Kerckhove, Esq.  
ShawPittman  
2300 N Street, N.W.  
Washington, D.C. 20037-1128  
**Counsel for MW Springmo, Inc.**

John R. Wilner, Esq.  
Bryan Cave, L.L.P.  
700 13th Street, N.W. Suite 700  
Washington, D.C. 20005-3960  
**Counsel for Stereo Broadcasting, Inc.**

  
Maryam B. Jeffrey